

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. N MC 7295 through N MC 7297.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Abandonment

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

3. Administrative Procedure: Generally--Federal Land Policy and Management Act of 1976: Generally--Statutes

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

APPEARANCES: E. A. Hollingsworth, Esq., Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

[1] R. C. Wilcox and R. C. Wilcox Mining appeal the October 13, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), that declared certain of Wilcox's unpatented mining claims abandoned and void. BLM took that action against the Rocketdyne 1, Rocketdyne 2, and Rocketdyne 3 (N MC 7295 through N MC 7297), located August 9, 1977, because no notice of intention to hold the claims or proof of labor performed on the claims for calendar year 1978 was received by BLM by December 30, 1978. Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 require the owner of an unpatented mining claim located after October 21, 1976, to file either of those documents, for each claim owned, with BLM prior to December 31 of each year following the calendar year of claim location. If the filing is not made, a statutory conclusive presumption of abandonment is invoked. 43 U.S.C. § 1744(c) (1976).

Wilcox advances several arguments on appeal, including assertions that all instruments required by FLPMA have been timely filed since the location of his claims, that BLM often misplaces such filings, and that claim owners should not have to bear the consequences of BLM's mistakes. He shows that proof of labor for the claims was filed August 28, 1978, with the Churchill County recorder and, according to the affidavit of Wilcox's agent, soon thereafter also with BLM. The possibility that the proof of labor was lost or otherwise misplaced by BLM would not be an uncommon occurrence, according to the appellant. In support, Wilcox notes that as president of the Royal Blue Mining Company, Inc., he received three BLM decisions declaring 72 mining claims abandoned and void on similar grounds. He asserts, "The decisions were vacated when [Wilcox] showed that two of the instruments had been misfiled and that he had in his possession file-stamped copy of a timely filed proof of labor for 57 mining claims that did not appear in any of BLM's records." He also notes that in that connection this Board issued an Order, dated July 22, 1981, vacating a BLM decision respecting several mining claims owned by Royal Blue Mining Company, Inc. That Order was based in part on

BLM's statement to the Board that the appellant in that case had submitted additional information that supported the request to vacate. An analogous situation involving another mining company is also cited to show BLM's fallibility.

[2] Appellant's evidence clearly shows that BLM employees are capable of making mistakes. Nevertheless, we cannot decide the instant case simply on evidence from previous unrelated cases. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. Jayne A. McHarge, 61 IBLA 163 (1982). That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence. H. S. Rademacher, 58 IBLA 152 (1981). But such a showing has not been made here.

Appellant argues that a mining claim cannot be "abandoned" until there is a concurrence of intention to abandon and some overt act, or failure to act, indicative of abandonment. However, for the reasons set forth in Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981), we reject that argument. Pursuant to section 314 of FLPMA, a mining claim for which the required filings are not made is conclusively considered abandoned, and "shall be void" under 43 CFR 3833.4.

[3] Wilcox cites FLPMA, section 102, 43 U.S.C. § 1701(a) (1976), and the Mining and Minerals Policy Act of 1970, section 2, 30 U.S.C. § 21a (1976), as dispositive declarations of Federal policy that require an interpretation of section 314 of FLPMA that is contrary to the one consistently held by this Board. Those sections essentially outline Congress' intent to provide for the Nation's need for minerals through economically sound and stable mining processes. Appellant asserts that nothing "could be more disruptive of a sound, stable, orderly and economical domestic mineral industry than the continual threat of losing valuable mineral deposits for failure to file an instrument with BLM or file one in an untimely manner." We need not comment on the effects that section 314 of FLPMA has on the mining industry or the development of domestic mineral resources, for our task is clearly delineated and must be carried out irrespective of such considerations. "[U]ltimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch." Daniel A. Engelhardt, 62 IBLA 93, I.D. (1982). The clear language of section 314 requires the annual filing with both BLM and the local recording office of either a notice of intention to hold or proof of labor performed on the claims. Failing that, the conclusive presumption of abandonment attaches. This Board is not the proper forum to entertain appellant's claims of FLPMA's unconstitutionality or other attacks on that or any statute. That must be left for the courts. David and Roirdon Doremus, 61 IBLA 367 (1982). Since appellant has not produced evidence showing that BLM received the necessary filing for 1978, we find no error in the BLM decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

